

Exhibit 5

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 11-62107-CV-WILLIAMS

LIBERTY MEDIA HOLDINGS, LLC,

Plaintiff,

vs.

SERGEJ LETYAGIN, d/b/a
SUNPORNO.COM, *et al.*,

Defendants.

_____/

ORDER

THIS MATTER is before the Court *sua sponte*. This action was initially filed on September 26, 2011. Plaintiff added several Defendants when it amended its complaint on November 17, 2011. Accordingly, the Court issued an order (DE 54) on January 30, 2012 instructing Plaintiff to effect service on all Defendants by the 4(m) deadline or to move for additional time to do so. Rule 4(m) of the Federal Rules of Civil Procedure provides that a plaintiff must serve a defendant within 120 days after the complaint is filed with the court. FED. R. CIV. P. 4(m). After that point, and upon notice to the plaintiff, "the court . . . must dismiss the action without prejudice against that defendant or order that service be made within a specified time." *Id.* Having provided the requisite notice to Plaintiff and noting that the service deadline has now passed without any

indication that any Defendant has been served,¹ it is hereby **ORDERED AND ADJUDGED** as follows:

- (1) This action and all claims against Defendants Sergej Letyagin d/b/a SunPorno.com, Ideal Consult, Ltd., "Advert," "Casta," "Trikster," "Worker," "Likis," "Tester," and Does 1-50 are **DISMISSED WITHOUT PREJUDICE** pursuant to Federal Rule of Civil Procedure 4(m).
- (2) The Clerk is directed to **CLOSE** this case for administrative purposes.
- (3) Any and all pending motions are **DENIED AS MOOT**.

DONE AND ORDERED in chambers in Miami, Florida, this 14th day of March, 2012.


KATHLEEN M. WILLIAMS
UNITED STATES DISTRICT JUDGE

¹ Although one Defendant has filed a notice of appearance and participated in a hearing on a temporary restraining order sought by Plaintiff, it did not indicate that it would waive its right to proper service. See *Magness v. Russian Fed'n*, 247 F.3d 609, 613 n.9 (5th Cir. 2001) (holding that the defendant did not waive right to proper service by appearing to contest a temporary restraining order and suggesting that the trial court could have properly terminated it for failing to timely serve); *Lewellen v. Morley*, 909 F.2d 1073, 1076-77 (7th Cir. 1990) (filing of appearance form in district court did not waive service). Moreover, the Court denied Plaintiff's request for alternative service with respect to certain Defendants in a sealed order dated December 8, 2011 (DE 35) and has not been notified of any plan to serve those Defendants.